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1   RECORD OF ORAL HEARING

2   UNITED STATES PATENT AND TRADEMARK OFFICE

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4   BEFORE THE BOARD OF PATENT APPEALS

5   AND INTERFERENCES

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7   *Ex Parte* RICHARD A. WATSON, JR.

                   _____

8

9   Appeal 2009-011777

             Application 09/893,693

10   Technology Center 2400

11   _____

12   Oral Hearing Held: June 22, 2010

13   _____

14 Before MARC S. HOFF, CARLA M. KRIVAK, and

15 ELENI MANTIS MERCADER, *Administrative Patent Judges.*

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1   The above-entitled matter came on for hearing Tuesday, June 22,

2   2010, commencing at 2:17 p.m., at the U.S. Patent and Trademark Office,

3   600 Dulany Street, Alexandria, Virginia, before Deborah Courville, a Notary

4   Public.

5   THE USHER: Calendar No. 62, Appeal No. 2009-011777. Mr. Patel.

6   JUDGE HOFF: Good afternoon.

7   MR. PATEL: Good afternoon. May it please the Board, my name is

8   Fahd Patel, with the law firm of Finnegan, Henderson, representing AOL for

9   Appeal No. 2009-011777. We took over this case from the previous

10 attorney of record, Fish and Richardson, and we are now prosecuting this

11 case.

12   Today I'd like to talk about a couple of things. First, I just want to go

13 into the independent claims, in particular, Claim 30 is a representative

14 independent claim, and focus on recitations that are of particular importance

15 to this outstanding Rejection. Then I'd like to talk about the cited reference

16 by the Examiner, U.S. Patent No. 6,904,026, and I'd like to talk about the

17 elements in that reference that the Examiner alleges corresponds to the

18 elements in our Claim and why we believe that it does not teach or suggest

19 those elements.

20   So in particular, the independent claim -- I'll focus on the primary

21 communication system of Claim 30, and in the reference I'll focus on the ISP

22 server, Item 13, which is what the Examiner alleges corresponds to the

23 claimed primary communication system. So in going into Claim 30,

24 Claim 30 recites a method for enabling electronic communication between

25 the Internet and a client system, and the first step is receiving at a primary

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1   communication system configured to act as an access point to the Internet

2   for data communications between the client system and the Internet. So that

3   is what I'd like to focus and zoom in on for the time being.

4   So switching now to the reference, in Figure 1 of the reference, there's

5   an overview of the system that -- and other different components of the

6   system here in Figure 1. And in particular, we have a mobile station in

7   Figure 1, and the mobile station can connect to the Internet via these Internet

8   access points, IAP. And so Figure 1 shows IAPs, two. It shows IAP 15 and

9   IAP 14. And the mobile station can connect to an IAP, a particular IAP,

10 when it's in a geographical area that's serviced by that IAP. So if a mobile

11 station is in a particular geographic area, it connects to the appropriate IAP,

12 and that allows the mobile station to then connect to the Internet. So mobile

13 station uses the IAP to connect outwardly to the Internet.

14   Now, as the mobile station moves around and roams, it may roam out

15 of the geographic area of a particular IAP. So in order to keep up with the

16 IAP that's servicing its geographic area, the mobile station needs some kind

17 of update to know which IAP to connect with. So Figure 1 shows some of

18 the components that allow the mobile station to keep up with the appropriate

19 IAP. So for example, in Figure 1 we have this component called the Internet

20 SC, Item 10, which is the service center, and we have the ISP Server 13.

21 Now, the ISP Server 13 includes information on multiple IAPs, so it has that

22 information and it can direct the mobile station to an appropriate IAP if it

23 has the appropriate information. So if it knows where the mobile station is,

24 it can tell the mobile station this is the IAP to connect with for your

25 geographic area. So, and the Internet SC is an intermediary. It is an

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1   intermediary between the mobile station and the IAP server for the

2   communications between the two.

3   So I'd like to also talk about Figure 4 because Figure 4 shows the

4   communications between these three components, which is of particular

5   importance in this reference. So in Figure 4 we have the three entities I

6   talked about before. We have the mobile station, the service center, and the

7   ISP server, and those are shown as the vertical lines. And the horizontal

8   lines are the communications, messages that get passed in between these

9   three entities. So the mobile station first sends an RIAP, which is a request

10 for Internet access point, to the SC, and the SC takes that request and it

11 forwards to the ISP server as an IAP request. When the ISP server gets the

12 IAP request, it -- from that message, it knows where the mobile station is

13 geographically and it can look in its own data base, in its own tables and

14 determine what is the preferable IAP for the mobile station to connect to.   It

15 knows where the mobile station is, it looks up, it knows the IAPs that are

16 available, and it finds an IAP that can service the mobile station. And it

17 responds to the SC with that information, identifying the appropriate IAP in

18 the IAP response message, and the SC then receives that IAP response

19 message and forwards it to the mobile station in the form of an SIAP

20 message. That's a subscribed Internet access point message. So that's the

21 communication -- those are the communications that are going on between

22 all these three entities.

23   Now, in the Examiner's Answer, the Examiner pointed to the ISP

24 Server Item 13 and alleged that this teaches or suggests -- well, it teaches

25 because this is an anticipation Rejection. The Examiner alleged that this

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1   teaches the claimed primary communication system, and we disagree with

2   that allegation. In particular, going back to the recitation of Claim 30 that I

3   pointed to in the beginning, in Claim 30 it states that the primary

4   communication system is configured to act as an access point to the Internet

5   for data communication between the client system and the Internet.

6   So just looking at Figure 1, we can see that ISP server is simply a

7   server that's connected to the Internet. It's not an access point to the Internet

8   for data communications between the client system and the Internet. All it is

9   is a server that stores information that the client system can access for its

10   own use to find an IAP. So that is the main sort of grounds of rejection that

11   the Examiner set forth in the Reply Brief -- in the Examiner's Answer, sorry,

12   as we understand it.

13   JUDGE MANTIS MERCADER: Can you explain to us -- I couldn't

14   find the specification where the primary communication system and a

15   secondary communication system is defined.

16   MR. PATEL: Okay, yes.

17   JUDGE MANTIS MERCADER: I don't see those terms in the

18   specification, unless I missed them. Do you know --

19   MR. PATEL: I'm not positive if that exact language is used in the

20   specification. I am aware of the components in the specification that do

21   provide support for those claim elements, and I can point you to those.

22   JUDGE MANTIS MERCADER: Okay.

23   MR. PATEL: So on page 16 of the specification, I'm looking at line

24   number 10. Line number 10 shows the basic configuration, so we have in

25   that area the client system, 605, and the host system, and so that provides

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1 support for the claimed -- client system in the claim and the primary

2 communication system. So the host system, 610, as an example, provides

3 support for the claimed primary communication system. And so further

4 support is also available on the next page, page 17. We talk about -- so for

5 example -- just to give some examples of some of the embodiments

6 disclosed in the specification, at the bottom of page 17, starting at line 8, we

7 talk about how the client can request access to the Internet and that that

8 request needs to pass through the host. So we talked about we have a client

9 and a host.

10   Now the client wants to access the Internet, so it sends a message to

11 the host, and then the host sends a message to an external Internet server. It

12 provides access to the Internet. The client does not directly access the

13 Internet. It accesses the host, and then the host allows it onto the Internet.

14   JUDGE MANTIS MERCADER: So the host is the primary

15 communication system?

16   MR. PATEL: Yes. The host can be -- provide support for the

17 claimed primary communication system, yes.

18   JUDGE MANTIS MERCADER: Then what is the secondary

19 communication system?

20   MR. PATEL: The secondary communication system, in one example

21 in the spec, can be the IP tunnel. That's shown on the same page, page 17,

22 starting at line 12. And that's also called a proxy elsewhere in the

23 specification.

24   JUDGE MANTIS MERCADER: So the proxy is the secondary

25 communication system?

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1   MR. PATEL: Yes, Your Honor. The proxy provides support for the

2 claimed secondary communication system.

3   JUDGE MANTIS MERCADER: Can you walk us through the Claim

4 and Figure 4? How does -- you have a primary communication system. In

5 the figure, the primary communication system -- a request --

6   MR. PATEL: Your Honor, are you referring to -- there were two sets

7 of drawings filed. There was one originally filed with the specification and

8 then there was a set of replacement drawings. I can look at -- I have both

9 copies.

10   JUDGE HOFF: We have the June 29th, 2001, and that was originally

11 filed --

12   MR. PATEL: Originally filed with them.

13   JUDGE MANTIS MERCADER: We don't have another --

14   MR. PATEL: I'm not sure if Figure 4 would be the best --

15   JUDGE MANTIS MERCADER: If you can select one that fits the

16 best, something that --

17   MR. PATEL: So one example is originally filed Figure 7, if you have

18 that. There are some issues with the drawings. We can address those at a

19 later point. But I was looking at Figure 7 of the originally filed. If you have

20 a copy of that, that would be a good way of explaining.

21   So here you have a client, 702, and a host, 704, and so at Step 705, the

22 client attempts to establish a connection to the host. So in the spec, one

23 example we talk about the host, it could be America Online. So our client's

24 America Online. Example of the host could be America Online and the

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1   client could be a user at home on the computer, and the client could establish

2   a connection to the host, just like America Online for example.

3   So now the first step is -- corresponds to that. So receiving at a

4   primary communication system configured to act as an access point to the

5   Internet. So the primary communication system, an example of that is the

6   host, 704, and the host device is able to connect to the Internet on behalf of

7   the client. And so we're receiving a request to access the Internet directed

8   towards the primary communication system. So again in Figure 7, host, 704,

9   receives the connection request.

10   And then the next step we can go to is processing the request of the

11 primary communication system. That's just 704 processing the request.

12 And then it's identifying at the primary communication system, based on the

13 process request, a second communication system that is more optimally

14 suited for providing Internet access to the client system than the primary

15 communication system.

16   So what's going on in the specification, some of the examples

17 described -- in some of the examples described, the host computer is not the

18 best way to get onto the Internet because it might be very far from the client.

19 So what the host does is the host identifies a local proxy, which is the IP

20 tunneling. I don't remember exactly what it was called, but it was -- we call

21 it a proxy in the specification or the IP tunneling device. So the IP tunneling

22 device might actually be closer to the client than the host, so what the host

23 does is the host responds to the client. So in Step 715, in Figure 7, it says

24 "direct client to identify the local IP tunnel." The local IP tunnel is the

25 proxy that is local to the client in this example. So that in subsequent

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1 communications, in subsequent -- with the Internet, the client can go through

2 the local proxy instead of having to go all the way to the host, if the host is

3 much farther, and that saves time. Instead of having to go all the way to the

4 host, the client could just go to the local proxy. And that's the example in

5 Figure 7.

6   And then in the Claim we talk about identifying at the primary

7 communication system a secondary communication system that is more

8 optimally suited for providing Internet access. So as I said, in the example

9 in Figure 7 that could be the host providing a proxy which is closer to the

10 client than the host is.

11   And then the last step of the Claim, just to finish walking through it, is

12 enabling configuration of the client system to direct subsequent Internet

13 access requests from the client system and to use a secondary

14 communication system as an access point to the Internet. So now the client,

15 now that it has the information of the proxy, it can connect to the proxy in

16 the example in Figure 7 instead of connecting to the host, and this saves

17 time.

18   JUDGE MANTIS MERCADER: Thank you.

19   MR. PATEL: Are there any additional questions?

20   If we have time, I could walk through this one other aspect in the

21 reference that the Examiner has not pointed to at all, but I thought I'd

22 address it if you have a few minutes just in case it comes up later.

23   JUDGE HOFF: Go ahead.

24   MR. PATEL: As I said, looking back at the reference, there's Internet

25 SC, Item 10, and we submit that that also does not teach or suggest the

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1   claimed primary communication system. So before, I talked about the ISP

2   Server 13, which is where the mobile station gets information about the

3   Internet access points, and I already argued that that does not teach or

4   suggest the claimed primary communication system.

5   Now I will also submit -- even though this has not been stated in the

6   Office Action or in any of the rejections, that the Internet Server SC also

7   does not teach or suggest the claimed primary communication system. So

8   going back, just a quick refresh, in Figure 4 we talked about the mobile

9   station, the SC and the ISP server and the communications among all three

10   of these, and we said that the SC receives a request from the mobile station

11   to find an Internet access point, forwards it out to the ISP server. The ISP

12   server responds with an IAP response. Now, in the IAP response that's

13   received by the SC there is an updated IAP, Internet access point, for the

14   mobile station. Now, so the SC in some -- the Examiner or the Board might

15   interpret the SC to have identified a secondary communication system,

16   which is the third step of the Claims. So even if that -- even if it can be said

17   that the SC does perform the identifying, which we don't concede, but in that

18   scenario it still wouldn't teach the claim because the SC is not determining --

19   is not identifying a second communication system that is more optimally

20   suited for providing Internet access to the client system than the primary

21   communication system.

22   So if the primary communication system is SC and the primary

23   communication is aware of an IAP that's for the mobile station, it cannot be

24   said that that IAP is more optimally suited for providing Internet access to

25   the client system than the SC, because the SC -- there's no comparison that

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1   the SC might be better or worse than the IAP. The IAP is only -- the IAP

2   that's selected only might be better than the previously selected IAP that the

3   mobile station is moving from, but has nothing to do with the SC. That's

4   just an intermediary that is facilitating communication between these two

5   devices, between the mobile station and the server on the Internet.

6   So I wanted to just cover that, and that's all I have. If there are any

7   other questions -- otherwise --

8   JUDGE HOFF: Judge Krivak?

9   JUDGE KRIVAK: None for me, thank you. I'm good.

10   JUDGE HOFF: Thank you, sir.

11   MR. PATEL: Thank you.

12   Whereupon, the proceedings, at 2:26 p.m., were concluded.

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